



ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF ADMINISTRATIVE LAW

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODE

ADOPTION

MULTI COUNTY: California Electronic Recording Transaction Authority

AMENDMENT

MULTI COUNTY: Association of California Water Agencies/Joint Powers Insurance Authority (ACWA/JPIA)

A written comment period has been established commencing on **April 30, 2010** and closing on **June 14, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest

code(s). Any written comments must be received no later than **June 14, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **June 17, 2010**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **June 17, 2010**, following the Public Meeting,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **June 17, 2010**, following the Public Hearing,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH

STANDARDS BOARD

A handwritten signature in black ink, reading "John D. MacLeod".

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and the General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **June 17, 2010**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 4
 Article 2, Section 1504
 Article 21, Section 1637, and
 Appendix C, Plate C-17
 GENERAL INDUSTRY SAFETY ORDERS
 Division 1, Chapter 4, Subchapter 7, Article 23
 Section 3622
 Scaffold Plank Design Requirements

- TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7, Article 108
 Section 5158
 Other Confined Space Operations

Descriptions of the proposed changes are as follows:

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 2, Section 1504
Article 21, Section 1637, and
Appendix C, Plate C-17
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 23
Section 3622
Scaffold Plank Design Requirements

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action was initiated by the Division of Occupational Safety and Health (Division) in its memorandum to the Occupational Safety and Health Standards Board (Board), dated December 22, 2006. The Division noted an increase in use of engineered and manufactured types of scaffold planking, particularly planks made from laminated veneer lumber (LVL). The Construction Safety Orders (CSO) standards addressing scaffold planking focus primarily on solid sawn Douglas Fir planking or planking products equivalent to solid sawn products. The standards do not adequately address scaffold planking made from products other than solid sawn lumber. In its memorandum, the Division indicated that the substantial differences between solid sawn plank and LVL plank and other engineered/manufactured planking products is such that determining equivalency is difficult to assess for both the Division and employers.

The proposal clarifies that solid sawn planking products other than Douglas Fir are acceptable for scaffold plank provided that appropriate lumber grading rules are met. The proposal addresses the design and strength requirements for manufactured planking and requires such planking to be used in accordance with the manufacturer's specifications. The Division and lumber inspection agencies have noted that some LVL planking products have substandard bonding and adhesive properties. The proposal would require that LVL planking manufactured after the effective date of the proposal bear the seal of an independent, nationally recognized inspection agency prior to being placed into service. Among other provisions, the proposal also establishes planking deflection limits consistent with federal OSHA standards. Finally, the proposal would require visual inspections of planking for defects and that damaged scaffold planks are not used and be removed from service.

Section 1504. Definitions.

Existing Section 1504 defines a broad category of words and terms used throughout the CSO. The definition for "Lumber" includes a list of terms defined in alphabetical order and existing subsection (C) provides the definition for "Structural Plank" that would be used with scaffolds to provide a working platform. The current definition of structural planking refers only to Douglas Fir plank products that meet the appropriately listed lumber grading rules. However, Southern Pine is the predominant species of wood used for scaffold planking. Under the definition for "Structural Plank", the proposal adds definitions for Southern Pine and other solid sawn scaffold planking that meet the appropriate lumber grading rules for scaffold planking.

The proposal would have the effect of clarifying and expanding the definition of "structural plank" to include other species of wood that are available and used for scaffold planking.

Section 1637. General Requirements.

Section 1637 contains a number of provisions addressing the design, construction and use of scaffolds.

Subsection (f).

Existing subsection (f) contains provisions for scaffold planking and focuses primarily on solid sawn wood planking and the related permissible spans for the use of such planking. An amendment is proposed to add an introductory sentence to subsection (f) showing that the subsection includes provisions for solid sawn scaffold planking and manufactured planking such as, laminated wood planking, metal planking, and planking manufactured from other materials.

The effect of this amendment is to broaden the scope of subsection (f) to include the types of scaffold planking products available. An amendment is also proposed for subsection (f)(1) to clarify that this subsection is applicable to solid sawn planking products.

Subsection (f)(2).

Subsection (f)(2) is reformatted as subsections (f)(2)(A) and (B). An amendment is proposed for subsection (f)(2)(A) to state that the permissible span table is specific to Douglas Fir and Southern Pine scaffold planking. The term “live” load essentially means the “working load” and is parenthetically inserted into the chart of subsection (f)(2)(A) for clarity and consistency with other subsections in proposed Section 1637.

New subsection (f)(2)(B) would require that the maximum permissible spans allowed for other wood species of scaffold planking to be determined by a licensed professional engineer.

The effect of these amendments will be to provide permissible spans specific for the type of wood planking used.

Subsection (f)(3).

A new subsection (f)(3)(A) is proposed that would require manufactured planking as described in this subsection to be capable of supporting, without failure, its own weight and 4 times the maximum intended working (live) load.

The effect of this subsection is to provide suitable strength requirements for planking, fabricated or manufactured, from various materials that is consistent with the overall safety factor required for scaffold systems.

Existing subsection (f)(3) is relocated, in part, to new proposed subsection (f)(3)(B) with editorial changes consistent with the other portions of the proposal. Proposed new subsection (f)(3)(C) has the effect of ensuring that manufactured scaffold planks are used in accordance with the manufacturer’s specifications.

Subsection (f)(4).

Language in existing subsection (f)(4) stating that all planks shall be capable of safely sustaining the intended load is proposed for deletion as the proposal provides specific criteria for the safe and suitable use of scaffold planking.

An amendment is proposed to require that prior to being placed in service, all LVL scaffold planks manufactured after the effective date of the regulation be labeled with the seal of an independent, nationally recognized, inspection agency certifying compliance with ASTM D 5456-09a and ANSI/ASSE A10.8-2001, Section 5.2.10. An informational NOTE for this subsection provides that ASTM D 5456-09a is the standard for the evaluation of structural composite lumber products (which includes LVL products). This NOTE also states that ANSI/ASSE A10.8-2001, Section 5.2.10 requires the inspection agency to certify that LVL scaffold planks are compliant with the design criteria in the ANSI/ASSE A10.8 standard.

This Division initiated this rulemaking action in large part because an increasing number of inferior LVL scaffold planks were being sold in California having sub-standard bonding and adhesive qualities causing them to delaminate prematurely rendering them defective for safe use as scaffold planking. The proposed amendments will have the effect of ensuring that bonding and adhesive properties of LVL planking are suitable for safe use. The seal of an independent inspection agency is already required in the ANSI A10.8 consensus standard for scaffold related safety requirements and will have the effect of providing the manufacturer guidance and the employer reasonable assurance that the product is suitable for use as scaffold planking.

New Subsection (f)(5).

A new subsection (f)(5) would require that prior to being placed into service, all solid sawn wood scaffold planks be certified by, or bear the grade stamp of, a grading agency approved by the American Lumber Standards Committee (ALSC). The ALSC is the appropriate accreditation/oversight organization for agencies inspecting solid sawn lumber products including scaffold planking. The provisions in this subsection have been a long standing requirement in the ANSI A10.8 consensus standard for scaffold safety requirements.

The effect of this provision will be to provide the employer reasonable assurance that the planking is suitable for use with scaffold systems.

New Subsection (f)(6).

A new proposed subsection (f)(6) would require all scaffold planks to be visually inspected for defects before use each day.

The effect of this amendment is that regular inspections of scaffold planking before use each day would identify planks that are defective/damaged.

New Subsection (f)(7).

A new proposed subsection (f)(7) would have the effect of requiring that defective or damaged scaffold planks are not used and that they be removed from service.

New Subsection (w).

A new proposed subsection (w) would require that platforms, including, but not limited to, solid sawn wood planks, engineered wood products, laminated veneer lumber, metal, composite, plastic, or any other manufactured planks, shall not deflect more than 1/60 of the span when loaded to the manufacturer's recommended maximum load.

This amendment is necessary for equivalency with a similar federal OSHA standard in 29 CFR 1926.451(f)(16) and would have the effect of reducing the likelihood that scaffold platforms or planking would be overloaded.

Construction Safety Orders, Appendix C, Plate C-17 "Suggested Test For Scaffold Planks."

Plate C-17 includes a simple impact field test for scaffold planks that involves loading the plank with personnel and listening for cracking sounds and looking for splitting wood. It was determined that the suggested test was subjective, did not include appropriate weight/load limits, and could result in overloading a scaffold plank in the testing process.

It is proposed to delete Plate C-17 in its entirety having the effect of removing a suggested testing method that is obsolete and possibly could damage scaffold planking.

General Industry Safety Orders (GISO), Article 23. "Mobile Ladder Stands and Scaffolds (Towers)."

Section 3622. General.

GISO, Article 23 contains requirements for mobile work platforms, ladder stands and mobile scaffolds. Section 3622 includes general requirements for certain mobile scaffolds.

Subsection (f). Work Levels.

Existing subsection (f) includes provisions for the work level platforms of mobile scaffold towers and states that work level platforms shall be made of wood, aluminum, or plywood planking, steel or expanded metal for the full width of the scaffold, except for necessary openings. This subsection also states in part, that all planking shall be Douglas Fir or equivalent. An informational "NOTE" refers to the appropriate lumber grading rules for wood planking. The existing standard has clarity concerns similar to those that prompted amendments for CSO, Section 1637. There are substantial differences between solid sawn plank and LVL plank, as well as other engineered/manufactured planking products, so that determining equivalency to Douglas Fir is difficult for both the Division and employers.

Amendments are proposed to delete references to various types of planking design materials and to delete the informational "NOTE" in subsection (f). A proposed amendment in subsection (f)(5) states that all scaffold platforms shall meet the requirements of CSO, Section 1637.

The proposed amendments will have the effect of providing clarity and consistency with provisions in the CSO that pertain to scaffold platforms and planking.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal includes a provision that scaffold planking be visually inspected before use which is not a new concept and employers should already be including inspections of equipment as part of their Injury and Illness Prevention Programs.

Scaffold plank manufacturers attended the advisory committee for this rulemaking and stated that the provisions that pertain to plank design and strength in this proposal are currently being met by legitimate manufacturers that produce scaffold planking suitable for use with scaffold systems. The proposal would require the seal of an independent nationally recognized inspection agency for laminated veneer lumber (LVL) scaffold planking prior to it being placed into service. Manufacturers indicated that this third party quality assurance inspection/monitoring of scaffold plank production is not a new concept and is standard practice for scaffold plank manufacturers and no new or significant costs are anticipated. A similar grade stamp or certification provision is included for solid sawn scaffold planking which has been a long standing requirement in national consensus standards for scaffold safety requirements and no new or significant costs are anticipated.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of

service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated as outlined under the heading “Impact on Businesses.”

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7, Article 108
 Section 5158
 Other Confined Space Operations

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Section 5158(e)(1)(D)1 contains a reference to Section 5144(e). At the time that reference was included in Section 5158(e)(1)(D)1, Section 5144(e) concerned air quality. In a rulemaking undertaken in 1998, the provisions of Section 5144(e) were modified and moved to Section 5144(i). However, the reference in Section 5158(e)(1)(D)1 to Section 5144(e) was not modified accordingly. The purpose of this rulemaking is to correct that discrepancy. This rulemaking was initiated by an e-mail received on June 3, 2009 from Mariano Kramer of the Division of Occupational Safety and Health.

Section 5158. Other Confined Space Operations.

This provision of the General Industry Safety Orders concerns breathing hazards regarding the industries and operations specified in Section 5156(b)(2)—such industries and operations as certain construction, agricultural, marine terminal, grain handling, telecommunications, natural gas utility and electric utility operations. Section 5158(e) concerns confined space operations, and Section 5158(e)(1)(D)1 states in part that the standby employee must have “an independent source of breathing air which conforms with Section 5144(e), available for immediate use.” Currently, Section 5144(e) has nothing to do with air quality (it did prior to the 1998 rulemaking referred to above); instead, it pertains to medical evaluations. The air quality provisions that Section 5158(e)(1)(D)1 intends to refer to are now found in Section 5144(i). This proposal would amend Section 5158(e)(1)(D)1 by replacing the existing Section 5144(e) reference with a Section 5144(i) reference. The proposal has the effect of ensuring that Section 5158(e)(1)(D)1 contains the intended cross reference rather than a cross reference that has no relation to the purpose or wording of Section 5158(e)(1)(D)1.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7

(commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than June 11, 2010. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written

comments received after 5:00 p.m. on June 17, 2010, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

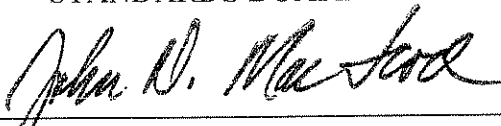
The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

A handwritten signature in black ink, reading "John D. MacLeod", written over a horizontal line.

JOHN D. MACLEOD, Chairman

2010-04-08

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 713 and 1054, Fish and Game Code and to implement, interpret or make specific sections 713 and 1054 of said Code, proposes to amend Sections 105, 105.1, 106, 107, 110, 112, 116, 119, 120.2, 120.3, 120.6, 120.7, 122, 123, 124, 125, 126, 147, 149, 150, 150.02, 150.3, 150.05, 180.3, 180.15, 700.4, 705, and to add Section 700.3, Title 14, California Code of Regulations, relating to Identification Required for Licenses Issued in ALDS, Telephone Number Required for Sport Anglers, and Commercial Fishing Applications and Fees.

Informative Digest/Policy Statement Overview

The Department will begin implementing an Automated License Data System (ALDS) in August 2010. Existing regulations specify customer information that must be collected at the time a license is purchased. This proposal would require the first time a customer applies for a license or other entitlement in ALDS, to provide an acceptable form of identification to ensure that customers are uniquely identified.

Additionally, under this proposal anglers would be required to provide their telephone number before a sport fishing license could be issued. Collection of a telephone number will allow California to conform with a federal mandate for purposes of establishing a National Saltwater Angler Registry. This will relieve California anglers of paying an additional fee each year to the federal government.

Editorial relocation of Section 705 to 700.3 is proposed to group sections affecting ALDS consecutively in regulation.

This proposal would consolidate the fees and applications for commercial fishing permits specified in regulation into one section. This would streamline the process to adjust the fees as allowed under the Fish and Game Code.

Other administrative changes affecting commercial fishing permits are proposed to comply with the Fish and Game Code; this includes incorporating by reference permits and fees that have been required for specific commercial fisheries, but the permits and fees have not previously been referenced in Title 14. Other updates and minor editorial changes are also proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the La Grande Room, Beach Resort Monterey, 2600 Sand Dunes Dr., Monterey, California, on Thursday, April 8, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Sierra Room, Lake Natoma Inn 702 Gold Lake Drive, Folsom, California, on June 24, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 14, 2010 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 14, 2010. All oral comments must be received no later than June 24, 2010 at the hearing in Folsom, California. E-mail comments sent to any e-mail address other than FGC@fgc.ca.gov does**

not guarantee the comments' inclusion in the rulemaking package. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Jon Snellstrom at the preceding address or phone number. **Ms. Maria Melchiorre, Fish and Game Commission, phone (916) 928-6881, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action specifies the identification required to purchase a license from the Department and adds the requirement that anglers must provide a telephone number to purchase a sport fishing license. These proposals are economically neutral to business.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New

Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective, and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 27, 2010

John Carlson, Jr.
Executive Director

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050 and 8282, Fish and Game Code and to implement, interpret or make specific sections 1050, 7852.2, 7857, 8033, 8043, 8047, 8250.5, 8281, 8282, 8284, 9000, 9001, 9001.7, 9002, 9005, 9006, 9011 of said Code, proposes to amend Section 125 and 125.1, Title 14, California Code of Regulations, relating to Commercial Rock Crab Permits.

Informative Digest/Policy Statement Overview

Under current regulations (Section 125, Title 14, CCR), only persons who held a valid southern rock crab trap permit during the immediately preceding permit year are eligible to obtain a permit for the following permit year. This has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation would allow new individuals to enter the fishery by obtaining a transferable permit from an existing permit holder. The proposed regulation would greatly increase the data available on the fishery by requiring rock crab landed to be separated out by species and for nearshore trap fishermen to land rock crab and record those landings on a landing receipt prior to using them as bait. Finally, the proposed regulations would add regulatory language specifically allowing a rock crab trap permit holder to remove the traps of another permit holder in the event of illness or injury to the traps' owner.

Option 1: The proposed regulations would allow all existing southern rock crab trap permits that have not been suspended or revoked to become transferable.

Option 2: The proposed regulations would issue transferable permits to existing southern rock crab trap permit holders that have not been suspended or revoked that have landed a minimum of [1 – 5,000] pounds of rock crab during any calendar year from 2005 through 2008 using trap gear, inclusive, as documented by Department landing receipts submitted in an individual's name and commercial fishing license identification number with trap gear identified.

To address the concerns surrounding the impact of providing permits to more active participants, the proposed regulations would limit the number of transfers processed by the department each license year (April 1 – March 31) to [0-10] individuals. This would retard the rate of new entrants into the fishery and permit the early detection of an increase in catch levels or a change in the distribution of effort among permittees. The annual limit on permit transfers would not apply in the event of death of the permit holder.

It is proposed that a transfer fee of [\$200 - \$2000] would be levied for the transfer of a southern rock crab trap permit.

Applications to transfer permits are proposed to be in the form of a notarized letter from the existing permit holder, or the estate of the permit holder in the event that the permit holder is deceased, identifying the transferee and shall include the original transferable southern rock crab trap permit, a copy of the transferee's commercial fishing license and the nonrefundable permit transfer fee. Applications are proposed to be submitted to the department's License and Revenue Branch, 1740 North Market Boulevard, Sacramento, CA 95834. It is proposed that applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers, the department shall conduct a manual drawing to determine which application(s) shall be processed. Applications that are not processed will be returned and may be resubmitted on or after the first day of the following permit year for consideration.

In the event of death of the southern rock crab trap permit holder, it is proposed that the estate of the permit holder may renew the permit if needed to keep it valid. It is also proposed that the estate of a deceased transferable permit holder may transfer the permit not later than 1 year from the date of death listed on the death certificate.

The proposed regulations would require rock crabs to be identified at the species level: red, brown or yellow on all landing receipts. The use of "unspecified rock crab" would be prohibited.

Under current regulations (Section 125.1(d), Title 14, CCR), rock crabs may be used as bait in finfish traps. However, there is no mechanism to track the amount of rock crab used as bait. The proposed regulation would require that all rock crabs are brought ashore, landed and recorded on a landing receipt before they can be used as bait in finfish traps. The total pounds of rock crab to be used as bait from each landing will be required to be recorded in the "Note Pad" field on the landing receipt. Rock crabs used as bait in finfish traps will be required to be accompanied by a landing receipt demonstrating that the crab to be used as bait has been landed prior to being used as bait. The fisherman would also be required to keep copies of landing receipts documenting the catch of rock crabs that are used as bait on the fishing vessel for a minimum of 30 days from the date of landing as listed on the landing receipt.

Minor edits are also provided to better align the reference of permit fees and applications under a centralized Title 14 section being proposed by the Department's License and Revenue Branch.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the La Grande Room, Beach Resort Monterey, 2600 Sand Dunes Dr., Monterey, California, on Thursday, April 8, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Sierra Room, Lake Natoma Inn 702 Gold Lake Drive, Folsom, California, on June 24, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 11, 2010 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 14, 2010. All oral comments must be received no later than June 24, 2010 at the hearing in Folsom, California. E-mail comments sent to any e-mail address other than FGC@fgc.ca.gov does not guarantee the comments' inclusion in the rulemaking package.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number. **Mr. Craig Shuman, Marine Advisor, Fish and Game Commission, phone (310) 869-6574, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None

- (c) Cost Impacts on a Representative Private Person or Business:

The proposed regulation to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses. Increased competition for the resource is possible but not likely since market demand primarily controls the amount of crab harvested.

The proposed regulations for species specific landing data and landing of rock

crab used as bait have the potential to moderately reduce the efficiency of rock crab and nearshore trap fishermen in the short-term. In addition, Rock crab that are to be used as bait will be required to be landed which will incur a landing tax of \$0.0019 per pound pursuant to FGC § 8041 and 8051. It is anticipated, however, that the participants in these fisheries will easily adapt to the proposed regulations with no significant economic impact.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None

- (f) Programs mandated on Local Agencies or School Districts:

None

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None

- (h) Effect on Housing Costs:

None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective, and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 27, 2010

John Carlson, Jr.
Executive Director

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Section 3605 in the California Code of Regulations (CCR), Title 15, Division 3, concerning Financial Assistance.

PUBLIC HEARING:

Date and Time: **June 22, 2010, from 9:00 a.m. to 10:00 a.m.**
Place: Office of Training & Professional Development
Mt. Lassen Conference Room, #117
10000 Goethe Road
Sacramento, CA 95827
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **June 22, 2010, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 255-5601; or by e-mail at RPMB@cdr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 255-5500**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**G. Long
Regulation and Policy Management Branch
Telephone (916) 255-5500**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Mark Delfin
Parole Agent III
Policy and Procedures Unit
Division of Adult Parole Operations
916-327-8282**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action will provide the following:

- Amends the title to Article 8 and Section 3605 to now reflect Financial Assistance, which is the appropriate meaning.
- Provides the current form utilized for the releasing of loan funds, the CDC Form 910C (Rev. 11/96), Bank Draft Stock Register, which is incorporated by reference into the regulations. The CDC Form 910C has been made available for review.
- Deletes from the text the CDC Form 1509 (4/82), Parolee Loan Receipt, which is no longer appropriate for this section.

Title 16, Division 4. Board of Chiropractic Examiners.

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter "board") is proposing to add regulations described in the Informative Digest below. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners at its office no later than 5:00 p.m. on June 14, 2010.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office no later than 15 days before the close of the written comment period.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 1000-4(b) and 1000-10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii), and to implement, interpret or make specific Sections 1000 - 4 (b), and 1000-10 (c) (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii), and Penal Code Sections 11105 and 11105.2; the board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Add Section 321.1:

The Chiropractic Initiative Act Section 1000 – 4(b) authorizes the board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

Penal Code Section 111502 authorizes the board to require an applicant to furnish a full set of fingerprints for the purpose of conducting criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

This proposal would require applicants and petitioners for reinstatement of a revoked or cancelled license to successfully complete a state and federal level criminal offender record information search conducted through DOJ, and will provide that the board will receive subsequent arrest notification for licensees. This proposal also requires licensees who

have not previously submitted fingerprints, or for whom records of electronic fingerprint submissions no longer exists, to complete the process necessary for state and federal level criminal offender record information. This proposal would further specify that licensees who fail to comply with this requirement are subject to disciplinary action against their license.

Since the late 1940's, the board has required applicants to submit fingerprint cards for the purpose of conducting a state and federal criminal history background investigation. In 1997, the board began requiring electronic fingerprint submission using Livescan for all applicants, excluding applicants from another state. This mechanism allows the board to enhance consumer protection by conducting an extensive screening process of applicants seeking licensure. Subsequent arrest reports regarding licensees have been reported electronically to the board on individuals fingerprinted with DOJ since October 27, 1975.

In order to protect the public from doctors of chiropractic who may pose a threat to the public, it is necessary for the board to be informed of past and current criminal convictions that are substantially related to the qualifications, functions, or duties of their professional service for which they are licensed. This proposal would affirm the board's authority to require fingerprints of new applicants and existing licensees and removes any ambiguity that may exist regarding this matter.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None

Business Impact:

The board initially determined that the proposed regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have any impact on creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impact on Representative Private Person or Business:

Chiropractic Examiners Board licensees that have not been previously fingerprinted or whose electronic fingerprint records no longer exist will have to meet the fingerprinting requirements in this proposed regulation.

Currently, there are 13,861 doctors of chiropractic licensed by the Board of Chiropractic Examiners. Of those total licensees, approximately 8,500 were licensed prior to 1997 and do not have electronic fingerprint records on file. Additionally, the Board licenses an average of 350 new chiropractors a year. On average, these individuals will incur a one-time cost of approximately \$75 (\$32 – DOJ, \$24 -FBI, \$19 – rolling fee to vendor) for submission of their fingerprints.

Assuming 8,850 individuals will need Livescan fingerprinting, at an average cost of \$75 to each individual, the total estimated cost for all individuals potentially affected by this regulation will be \$663,750. These fees are not imposed and collected by the board, but are paid directly to the DOJ, FBI and the vendor providing the service.

Effect on Housing Costs: None

Effect on Small Business:

The board has determined that this regulatory proposal will not impose a cost to small businesses.

This proposal would only affect licensees who have not been previously fingerprinted or whose electronic fingerprint records no longer exist who will incur a minimal overall cost for processing of the fingerprints. In addition, there are approximately 750 vendors statewide who provide fingerprinting services; therefore, there should be no initial or ongoing cost impact upon the vendors as they are already equipped to provide the service.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative that is considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of reasons for the proposed action and has all the information available upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all the information, upon which the proposal is based, may be obtained upon written request from:

Dixie Van Allen, Program Analyst
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
(916) 263-5329
Fax (916) 263-5369
dixie.vanallen@CHIRO.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, www.chiro.ca.gov.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
Telephone: (916) 263-5329
Fax: (916) 263-5369
E-mail: dixie.vanallen@CHIRO.ca.gov

The backup contact person is:

Name: Robert Puleo
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833
Telephone: (916) 263-5355
Fax: (916) 263-5369
E-mail: chiro.info@chiro.ca.gov

Web Site Address: Materials regarding this proposal can be found at www.chiro.ca.gov.

**TITLE 17, Division 2, Chapter 2
DEPARTMENT OF DEVELOPMENTAL SERVICES**

NOTICE OF PROPOSED RULEMAKING

Early Start Procedural Safeguards

The Department of Developmental Services (DDS) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 2, Sub Chapter 5: Procedural Safeguards, by amending sections 52170, 52172 and 52173.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on **June 14, 2010**. Please submit any written comments to the DDS contact person designated below. In addition, DDS will receive both oral and written comments at the public hearing. All related documents are found at the website below:

http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm

Public Hearing

One public hearing to receive oral and written comments is scheduled as follows:

1. **[June 17, 2010]** at **[9:00 AM]** at 1600 Ninth Street, Sacramento, California, 95814,
Bateson Building, Room 360.

At this time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The hearing will be adjourned immediately following the completion of oral testimony presentations. Testimony submitted in writing or presented orally, will be identified by the subject number and title for the item listed above. Copies of any written statements are appreciated. Persons presenting oral statements are requested to also submit written copies of those statements. The hearing location is wheelchair accessible.

Authority and Reference

Authority: Sections 95007 (f) and 95028, Government Code

Reference: Section 95007 (f) and (g), Government Code; 20 United States Code, Sections 1439 (a) (1) a (8) and 1415 (e) and (f); and 34 Code of Federal Regulations, Sections 303.419, 303.420, 303.421, and 303.510 through 303.512.

Informative Digest/Policy Statement Overview

California's Early Start program was established in response to federal legislation, Individuals with Disabilities Education Act (IDEA) Part C administered by the Office of Special Education Programs (OSEP). IDEA, Part C ensures early intervention services for infants and toddlers with disabilities and their families are coordinated and family-centered. Federal regulations require State's to implement procedural safeguard processes as part of their application to receive Part C grant funding. Current state regulations do not specify that eligibility for services issues may be addressed in the complaint process. State regulations currently also do not provide for mediation to be available during complaint procedures. For these reasons, OSEP made findings of non-compliance regarding State procedural safeguards after reviewing California's Annual Performance Report for FFY 2007. The proposed amendments to the Early Start Regulations will bring California into compliance with applicable federal regulations. OSEP indicated in correspondence to DDS that financial sanctions jeopardizing California's IDEA Part C grant would be imposed if regulations were not amended to conform with federal regulations.

Title 17, California Code of Regulations (CCR), Division 2, Chapter 2, Subchapter 5: Procedural Safeguards.

Section 52170 (a) and (f). Amendments to subsection (a) and (f) are proposed to clarify that a complaint may be filed for any violation of IDEA Part C including services and the determination of eligibility. The existing subsection (g) is added to the existing subsection (f).

Section 52170 (g) A new subsection (g) is proposed to provide for mediation to be available at any time to resolve disagreements involving any matter related to IDEA Part C.

Section 52172 (b). A new subsection (b) is proposed to provide a procedure whereby a parent may at any time request a mediation conference regarding any alleged violation of federal or state statute or regulation governing the provision of early intervention services. Existing subsections (b) through (g) are re-lettered accordingly.

Section 52172 (e) as re-lettered. Subsection (e) is proposed to be amended to specify that the timeframe for either a mediation conference or a due process is not to exceed a total of thirty days for each process. Thirty days was chosen as the timeframe to align with existing due process hearings timeframes for consistence.

Section 52173 (b). Existing language in subsection (b) is proposed to be deleted and replaced to specify that mediation is available at any time to resolve disagreements involving any matter related to IDEA Part C.

Initial Local Mandate and Fiscal Impact Determinations

The DDS has made the following initial determinations regarding the proposed regulatory actions:

- 1) Mandate on local agencies or school districts: None.
- 2) Significant costs or savings to any state agency: None.
- 3) Cost to any local agency or school district that must be reimbursed in accordance with Sections 17500 through 17630 of the Government Code: None.
- 4) Other nondiscretionary costs or savings imposed on local agencies: None.
- 5) Cost or savings in federal funding to the state: None.

Economic Impact and Business Assessment

The DDS has made the initial assessment and determination that the adoption of these regulations would not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, or a significant effect on housing costs. In addition, the adoption of these regulations would not affect:

- 1) The creation or elimination of jobs in California;
- 2) The creation of new businesses or the elimination of existing businesses within California; or
- 3) The expansion of businesses currently doing business within California.

Cost Impacts on Representative Private Persons or Businesses

The DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business

The DDS has determined that the proposed regulations would not affect small businesses as defined by Sections 11342.610 of the Government Code because small businesses are not required to comply with or enforce the regulations, nor would any benefit or detriment be derived from enforcement.

Alternatives Considered

In accordance with Section 11346.5(a)(13) of the Government Code, DDS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. These amendments are required by OSEP to correct findings of non-compliance regarding procedural safeguards.

The DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearings.

Contact Persons

Comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Department of Developmental Services
Children and Family Services Branch
1600 Ninth Street, Room 340, MS 3-8
Sacramento, California 95814
Attention: Michael Miguelgorry
Phone: (916) 653-4017 Facsimile: (916) 654-3255
Email Address: michael.miguelgorry@dds.ca.gov

If Mr. Miguelgorry is unavailable, you may also contact Patric Widmann at 916-654-3722.

Availability of Rulemaking Documents

The DDS has prepared and has copies ready for public review of the exact text of the proposed regulations, and Initial Statement of Reasons for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the Initial Statement of Reasons and text of the proposed regulations, along with all other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact person at the above address. In addition, the proposed regulations text, Initial Statement of Reasons and other materials for this rulemaking may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm.

Regulation text which is being added or amended is indicated by underline or italics, and deletions are indicated by strikeout, as required by Section 11346.2(a)(3) of the Government Code.

Availability of Changed or Modified Text

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. If the text is modified, the text may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm. Please send requests for copies of any modified regulations to the contact persons named above.

Final Statement of Reasons

When the Final Statement of Reasons is available, it may be viewed over the internet at http://www.dds.ca.gov/EarlyStart/Statutes_Regs.cfm. Additionally, requests for the Final Statement of Reasons may be made to the contact persons named above.

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 AB 335 Homeless Assistance Domestic Violence Provisions

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held as follows:

June 16, 2010
Office Building # 8, Room 323
744 P St.
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on June 16, 2010.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations Development
California Department of Social Services
714 P Street, MS 8-4-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not upon school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code because there is no estimated increase in local costs associated with the implementation of these regulations.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553, 10554, 10604, and 11450(g) of the Welfare and Institutions Code. Subject regulations implement and make specific Section 11450(f)(2)(E), (iii), (v), and (vi), Welfare and Institutions Code, AB 335 (Chapter 726, Statutes of 2007).

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:	Sue Tognet	(916) 657-2586
Backup:	Zaid Dominguez	(916) 657-2586

Department of Fish and Game – Public Interest Notice
For Publication April 30, 2010
PROPOSED RESEARCH ON FULLY PROTECTED SPECIES
Monitoring California Least Tern Nesting Colonies

The Department of Fish and Game (“Department”) received a proposal on March 18, 2010 from Miss Joelle J. Fournier, San Diego, requesting authorization to study California Least Terns (*Sterna antillarum browni*) (CLTE) a Fully Protected species, for research purposes, consistent with the conservation and recovery of this species. The proposed activities consist of:

- 1) Monitoring reproductive output of CLTE throughout their breeding range with presence/absence surveys, nest searches, and nest monitoring; collecting survival data on chicks; and documenting all cases of mortality, human impact, and predator activity. Data would be collected by observation and monitoring with binoculars/spotting scopes in or near potential and known breeding habitat, and locating nests on foot. No birds or eggs will be handled unless approval is obtained prior to such activity from both the Department and the U.S. Fish and Wildlife Service.
- 2) Handling and banding of CLTE, to obtain growth and survival rates of the different age classes.
- 3) Salvaging dropped feathers and hatched eggshell/membranes for donation to a scientific institution for chemical analysis.

The applicant is in the process of obtaining the required Scientific Collecting Permit (SCP) amendment to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities. As these birds are also federally-listed endangered species, the applicant already possesses a valid federal Threatened and Endangered Species Recovery permit (TE #213726-0) that authorizes surveying activities throughout the range of CLTE. The applicant has in process an amendment to the Recovery permit to include activities of handling and banding, and also has a permit application for banding in process with the U.S.G.S. Bird Banding Lab.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected birds after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after May 30, 2010, for an initial term of two years, renewable with Department authorization. Contact: Wildlife Branch, 1812 9th Street, Sacramento, CA 95811, Attn.: Esther Burkett.

CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission, at its June 24, 2009, meeting in Woodland, California, set aside its June 27, 2008, written findings in support of its decision to reject the petition filed by the Center for Biological Diversity to list the American pika (*Ochotona princeps*) as a threatened species. The Commission reconsidered the petition and rejected it based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At this meeting, the Commission also announced its intention to ratify its findings.

NOTICE IS ALSO GIVEN that, at its October 1, 2009, meeting in Woodland, California, the Commission adopted findings outlining the reasons for its rejection of the petition.

NOTICE IS ALSO GIVEN that, at its April 7, 2010, meeting in Monterey, California, the Commission adopted the following findings outlining the reasons for its rejection of the petition and which supersede the findings adopted at the October 1, 2009 meeting.

BACKGROUND

August 22, 2007. The Commission office received a petition from the Center for Biological Diversity (CBD) to list the American pika as threatened under the California Endangered Species Act (CESA).

August 30, 2007. The Commission office referred the petition to the Department of Fish and Game (Department) for review and analysis pursuant to Fish and Game Code Section 2073.5.

September 10, 2007. The Commission submitted a notice of receipt of the petition, for publication in the California Regulatory Notice Register, as well as for mailing to interested and affected parties.

September 13, 2007. The Department submitted a written request for a 30-day extension to evaluate the petition.

October 12, 2007. The Commission approved the Department's request for a 30-day extension to evaluate the petition.

December 21, 2007. The Department submitted its written evaluation of the petition.

February 7, 2008. The Commission announced receipt of the Department's evaluation of the petition to list the American pika as threatened and indicated its intent to consider the petition, the Department's evaluation, and public comments at the March 6-7, 2008 meeting.

March 4, 2008. The Commission office received a 25-page letter from CBD in rebuttal to the Department's evaluation. Six additional exhibits were appended to this letter.

March 7, 2008. The Department discussed its evaluation of the petition at the Commission meeting. The Commission took comments on the petition and the Department's evaluation. Because of the additional information submitted by CBD, the Commission continued its

consideration of the petition to the April 10-11 meeting in Bodega Bay.

April 8, 2008. The Commission office received an e-mail message from Mr. Brian Nowicki of CBD, with four attachments pertaining to the American pika.

April 10, 2008. The Commission considered the petition and took additional comments related to it and the Department's evaluation. At this meeting the Commission rejected the petition, finding that it did not contain sufficient information to indicate the petitioned action may be warranted. Staff was directed to prepare a draft statement of Commission findings pursuant to Fish and Game Code Section 2074.2.

August 19, 2008. CBD filed a Petition for Writ of Mandate in San Francisco Superior Court challenging the Commission's decision to reject the petition.

May 11, 2009. San Francisco Superior Court Judge Peter Busch issued a writ of mandate directing the Commission to set aside its June 27, 2008 findings rejecting the petition to list the American pika and reconsider its action in light of the court's judgment.

May 19, 2009. The Commission office received a 17-page letter from CBD requesting that the Commission take into account the information in the letter when reconsidering the petition.

June 24, 2009. The Commission considered the petition and took additional comments related to it. At this meeting, the Commission set aside its June 27, 2008 written findings in support of its decision to reject the petition. At this meeting, the Commission also reconsidered and rejected the petition without prejudice, finding that it did not contain sufficient information to indicate the petitioned action may be warranted. Staff was directed to prepare a draft statement of Commission findings pursuant to Fish and Game Code Section 2074.2. At this meeting, the Commission also decided and announced that any additional evidence submitted by CBD, including its May 19, 2009 letter, should be submitted to the Commission as part of any new petition CBD chooses to submit.

October 1, 2009. The Commission adopted findings outlining the reasons for its rejection of the petition.

II STATUTORY REQUIREMENTS

A species is endangered under CESA (Fish and Game Code § 2050 et seq.) if it "is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) A species is threatened under CESA if it is "not presently threatened with extinction [but] is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by [CESA]..." (Fish & G. Code, § 2067.) Responsibility for deciding whether a species should be listed as endangered or threatened rests with the Commission. (Fish & G. Code, § 2070.)

California law does not define what constitutes a "serious danger" to a species, nor does it describe what constitutes a "significant portion" of a species' range. The Commission makes the determination as to whether a species currently faces a serious danger of extinction throughout a significant portion of its range (or, for a listing as threatened, whether such a future threat is likely) on a case-by-case basis after evaluating and weighing all the biological and

management information before it.

Non-emergency listings involve a two-step process. First, the Commission "accepts" a petition to list the species, which immediately triggers regulatory protections by establishing the species as a candidate for listing and triggers up to a twelve-month study by the Department of the species' status. (Fish & G. Code, §§ 2074.2, 2074.6.) Second, the Commission considers the Department's status report and information provided by other parties and makes a final decision to formally list the species as endangered or threatened. (Fish & G. Code, § 2075.5.) To be accepted by the Commission, a petition to list a species under CESA must include sufficient scientific information that the listing may be warranted. (Fish & G. Code, § 2072.3; Cal. Code Regs., tit. 14, § 670.1, subds. (d) and (e).) The petition must include information regarding the species' population trend, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map. (Fish & G. Code, § 2072.3; Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).)

Within ten days of receipt by the Commission, a petition is forwarded to the Department for analysis. (Fish & G. Code, § 2073.) Within 90 days of receipt, the Department submits to the Commission an evaluation report of the petition and other available information (Fish & G. Code, § 2073.5), including a recommendation on whether the petitioned action may be warranted. The Department may request and be granted a time extension of up to 30 additional days to submit the evaluation report. After public release of the Department's evaluation report (Fish & G. Code, § 2074), the Commission will schedule the petition for consideration. In deciding whether it has sufficient information to indicate the listing may be warranted, the Commission is required to consider the petition itself, the Department's written evaluation report, and other comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The standard of proof to be used by the Commission in deciding whether listing may be warranted (i.e., whether to accept or reject a petition) was described in *Natural Resources Defense Council v. Fish and Game Commission* (1994) 28 Cal. App.4th 1104 (NRDC case). In the NRDC case, the court determined that "the Section 2074.2 phrase 'petition provides sufficient information to indicate that the petitioned action may be warranted' means that amount of information, when considered in light of the Department's written report and the comments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur..." (*Id.*, at p. 1125.) This "substantial possibility" standard is more demanding than the "reasonable possibility" or "fair argument" standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is "more likely than not" to occur. (*Ibid.*)

The NRDC court noted that this "substantial possibility" standard involves an exercise of the Commission's discretion and a weighing of evidence for and against listing, in contrast to the fair argument standard that examines evidence on only one side of the issue. (*Id.*, at p. 1125.) As the Court concluded, the decision-making process involves:

...a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.

(*Id.*, at p. 1126.) Therefore, in determining whether listing "may be warranted," the Commission must consider not only the petition and the report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

In *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, the court acknowledged that "the Commission is the finder of fact in the first instance in evaluating the information in the record." (*Id.*, at p. 611, citing *NRDC*, *supra*, 28 Cal.App.4th at p. 1125.) The court explained:

[T]he standard, at this threshold in the listing process, requires only that a substantial possibility of listing could be found by an objective, reasonable person. The Commission is not free to choose between conflicting inferences on subordinate issues and thereafter rely upon those choices in assessing how a reasonable person would view the listing decision. Its decision turns not on rationally based doubt about listing, but on the absence of any substantial possibility that the species could be listed after the requisite review of the status of the species by the Department[.]

(*Ibid.*) Thus, without choosing between conflicting inferences, the Commission must objectively evaluate and weigh the information both for and against the listing action and determine whether there is a substantial possibility that the listing could occur. (*Id.*, at p. 612.)

III REASONS FOR FINDING

This statement of reasons for the finding sets forth an explanation of the basis for the Commission's finding and its rejection of the petition to list the American pika as a threatened species. It is not a comprehensive review of all information considered by the Commission and for the most part does not address evidence that, while relevant to the proposed listing, was not at issue in the Commission's decision. However, all written and oral comments presented to the Commission prior to its April 10, 2008 meeting regarding the petition are considered part of the record.

In order to accept this petition, the Commission is required to determine that it has sufficient information to persuade a reasonable person that there is a substantial possibility that listing of the American pika could occur. Guided by the *NRDC* and *Center for Biological Diversity* cases, the Commission must objectively weigh and evaluate all evidence.

Fish and Game Code Section 2072.3 lists several informational categories to be evaluated in determining whether a petition should be accepted. The petition and record as a whole were insufficient to demonstrate that the listing action could occur.

The informational deficiencies and categories of information described in Section 2072.3 most relevant to this finding are:

- (1) Population trend;
- (2) Population abundance; and
- (3) Degree and immediacy of threat.

1. **Population Trend:**
2. **Population Abundance:**

The petition contains minimal information on population abundance, density or trends. The petition reports that "... pika populations have been lost from multiple low-elevation sites in Yosemite National Park during the past 90 years." Otherwise, it reports no information regarding population numbers, except for the White Mountains (*O. p. sheltoni*) subspecies. While it appears that near-annual surveys have occurred within or near Bodie State Historic Park (Nichols, personal communication to Gustafson, 2007), these surveys are not sufficient to conclude that listing of this subspecies may be warranted. Among its deficiencies, the survey results are not reported in the Population Status portion of the petition, the methodology and survey site selection is not adequately described, the information presented has not been independently verified, confirmed or peer-reviewed, and the scope and context of the surveys in relation to the entire Bodie Hills area is unclear, particularly since Dr. Nichols still observed pikas in Bodie State Historic Park.

The petition does not describe the overall geographic range of the pika in California or the geographic range of any of the five subspecies found in the State. The petition provides no information on the distribution of the pika within its California geographic range, other than to say that elevations of historic populations [in California] ranged from 1370 [meters] to 3700 [meters]. -The petition provides no information or description on any overall trend in the size or distribution of populations of the pika in California or of populations of four of the five sub-species occurring in the State.

The Commission finds that the population status of the American pika in California is largely unstudied and unknown. There have been no systematic, comprehensive, rangewide studies of pikas in California, and the petition does not contain sufficient information about the American pika throughout all or a significant portion of its range in California. Parameters to describe abundance, density, recruitment and population trends are unknown or unavailable. Further, the petition's statement that populations were lost from multiple low-elevation sites in Yosemite was not justified, according to a key researcher in the Yosemite National Park pika study, who stated that pika populations appeared healthy (Patton, personal communication).

Petitioner asserts that because of the lack of monitoring information, a rationale for listing should not depend on showing that population status is declining in California. Instead, petitioner argues that global warming poses a threat to the long-term survival of pikas in California and listing is justified because:

1. the pika is a unique mammal and extremely vulnerable to high temperatures;
2. upper elevation habitat for California pikas has experienced significant temperature increases, making it less suitable;
3. pika range in California is contracting upslope;
4. a recent study (Beever et al., 2003) reported pika population extirpations at six Oregon and Nevada locations within the Great Basin ecoregion and attributed extirpations to thermal stress from climate change; and
5. pikas in California are threatened by continued habitat alteration due to climate change.

Petitioner described potential broad scale effects of climate change on wildlife and plant communities of the Sierra Nevada ecoregion, and has cited sources to establish the vulnerability of pikas to high temperatures. However, the petition does not discuss the potential for

behavioral adaptations in pikas as a method of mitigating at least some anticipated effects of global warming. This is especially relevant because pika populations at lower elevations (such as Bodie State Historical Park) apparently reduce mid-day activity as a means of avoiding the heat.

The petition also asserts that upper elevation habitat for California pikas has experienced significant temperature increases and is now less suitable because pika range in California is contracting upslope. However, the petition's evaluation of microhabitat conditions at upper elevation habitat is inadequate, especially subalpine microclimate conditions related to temperature. The petition does not adequately demonstrate that pika distribution in California has contracted (or is contracting) upslope. Moreover, the petition does not show that upslope habitat in California is significantly limited in its availability or quality, to the extent that an upslope shift in distribution would be expected to constitute a threat to pika populations statewide.

Most important, the petition apparently attempts to use habitat conditions and population trends in the Great Basin ecoregion as proxies to predict the demise of pikas in the Sierra Nevada ecoregion of California. It does so without adequately comparing or contrasting these ecoregions, and without providing sufficient information about this ecoregion in California. It is erroneous to assume that because they are adjacent to one another, these ecoregions are similar in terms of pika habitat suitability. Because of the availability of suitable, continuous high-elevation habitat, distribution of pikas along the Sierra Nevadas may be much more continuous than within the Great Basin. The petition fails to acknowledge or discuss this, and the Commission does not believe that the decline of some pika populations in the Great Basin constitutes sufficient information to create a substantial possibility that listing pikas within the Sierra Nevada ecoregion in California may be warranted.

Fish and Game Code Section 2072.3 clearly states that the petition must provide information about species' abundance and population trend. This information must be about the species in California. Although some may suggest that pikas are difficult to survey, it is worth noting that, in addition to the population trend data available from the Great Basin, abundance and population trend information is available for other subspecies of pika in Alaska and China. This petition is clearly deficient in that it fails to provide sufficient scientific information on both population trend and abundance.

3. Degree and immediacy of threat:

The lack of population abundance and trend information in the petition also impacts the discussion of purported threats to the American pika. Without a reliable population estimate, realistic assessment of the scope of the threat to the species is impossible. Most listings of other species by the Commission were clearly documented by utilizing population size to show dramatic and measurable declines caused by the lack of protections. Some listings of species looked to small population size initially to show the need for immediate protection.

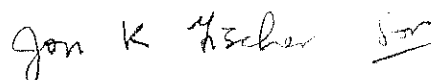
The petition lacks empirical data to describe population trend and abundance. Instead, petitioner implicitly assumes that extirpations of pika populations in the Great Basin are predictive of similar occurrences within the Sierra Nevada ecoregion. It is not reasonable to accept such an assumption without empirical data and a comparison of the Sierra Nevada and Great Basin ecoregions. Thus, in discussing purported threats to the American pika as a result of climate change, the petition is speculative and does not provide sufficient information for the Commission to determine that there is a substantial possibility that the listing of pikas could occur.

Fish and Game Code Section 2072.3 explicitly requires the presentation of sufficient credible information on the questions of degree and immediacy of threat and the impact of existing management efforts. Section 2072.3 provides that "Petitions shall include information regarding...the degree and immediacy of threat, the impact of existing management efforts...." The petition lacks sufficient information on the degree and immediacy of threat component of the statute under current conditions.

IV FINAL DETERMINATION BY COMMISSION

The Commission has weighed and evaluated all information and inferences for and against accepting the petition, including the scientific and general evidence in the petition, the Department's written report, and written and oral comments received from members of the public. Based upon the record, the Commission has determined that the petition and overall record provides insufficient evidence to persuade an objective, reasonable person that the petitioned action may be warranted. (Fish & G. Code § 2074.2.) In making this determination the Commission finds that the petition does not provide sufficient information in the categories of population trend, abundance, and degree and immediacy of threat to find that the petitioned action may be warranted. The Commission also finds that the petition provided insufficient information range-wide regarding population trends and abundance and degree and immediacy of threat for the Commission to adequately assess the threat and find that an objective, reasonable person would conclude there was a substantial possibility that listing the species could occur. The petition is rejected without prejudice to CBD submitting a new petition based on all available information about the status of the American pika in California.

Fish and Game Commission



Dated: April 7, 2010

John Carlson Jr.,
Executive Director

**NOTICE OF RESCHEDULED PUBLIC HEARING, EXTENSION OF WRITTEN
COMMENT PERIOD AND REVISED INITIAL STATEMENT OF REASONS**

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ADOPTION OF CCR SECTION 559 UNDER TITLE 2, DIVISION 1, CHAPTER 2,
ARTICLE 2**

(FULL NOTICE ORIGINALLY PUBLISHED IN THE CALIFORNIA REGULATORY
NOTICE REGISTER 2010, NO. 14-Z, APRIL 2, 2010,
OAL NOTICE FILE NUMBER Z-2010-0323-04)

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) has:

- Rescheduled the public hearing regarding the above referenced regulatory action pertaining to the Disclosure of Placement Agent Fees, Gifts and Campaign Contributions, from the originally noticed date and time of the regularly scheduled meeting of the Investment Committee of the CalPERS Board, May 17, 2010, at 9:00 a.m. Comments on the proposed action will be taken at a public hearing to be placed on the agenda of the rescheduled meeting of the CalPERS Investment Committee:

June 14, 2010

9:00 a.m.

California Public Employees' Retirement System
Lincoln Plaza North, Auditorium
400 Q Street
Sacramento, California 95811

- Extended the 45 day written comment period to June 14, 2010.
- Revised the Initial Statement of Reasons originally issued with the Notice of Proposed Regulatory Action.

Please direct any inquiries concerning this notice to:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, California 94229-2702

Telephone: (916) 795-0713

Fax: (916) 795-4607

E-mail: veronica_mora@calpers.ca.gov

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Office of Administrative Law**Changes Filed with Secretary of State**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916)653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-0304-01
Air Resources Board
Low Carbon Fuel Standard (LCFS) 2009 ~ Part 2

This action completes the Board's adoption of the Low Carbon Fuel Standard by finalizing provisions relating to the carbon intensity of biodiesel and renewable diesel fuel made from soybeans that had been held back for further development and public comment and the addition of a severability clause to subarticle 7 that was omitted from the original proposal as the result of an oversight.

Title 17
California Code of Regulations

Adopt:
Amend: 95480.1, 95481, 95486
Repeal:

Filed 04/15/2010 Effective 04/15/2010

Agency Contact: Amy Whiting (916)322-6533

File# 2010-0302-01
Board of Equalization
Mandatory Audits

This rulemaking amends three sections within Title 18 to amend the mandatory audit requirements currently found in regulation to reflect the changes implemented by AB 550, CH 297 Statutes of 2008. AB 550 changed the requirement from mandatory audits to requiring assessors to conduct a "significant number of audits" as defined in statute. There are also several other non-substantive changes made to the regulations

Title 18
California Code of Regulations

Adopt:
Amend: 192, 193, 371
Repeal:

Filed 04/14/2010 Effective 05/14/2010

Agency Contact: Richard Bennion (916)445-2130

Office of Administrative Law**Changes Filed with Secretary of State**

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File# 2010-0308-01

Board of Forestry and Fire Protection

Removal of Expired Forest Practice Rules, 2010

This Section 100 Change Without Regulatory Effect repeals regulations or portions of regulations having sunset dates which have since expired.

Title 14

California Code of Regulations

Adopt:

Amend: 895.1, 914.6, 934.6, 954.6, 1024, 1025, 1026, 1030, 1052, 1052.1, 1052.4, 1092, 1092.01, 1092.09, 1092.29

Repeal:

Filed 04/20/2010

Effective

Agency Contact: Christopher Zimny

(916)653-9418

File# 2010-0309-02

Commission on Peace Officer Standards and Training

Tactical Medicine Course

This regulatory action establishes the course content recommendations pursuant to Penal Code section 13514.1 for Tactical Medicine Training courses. The amendment to Title 11 section 1084 of the California Code of Regulations establishes the minimum number of hours of training and the topical areas for the courses.

Title 11

California Code of Regulations

Adopt:

Amend: 1084

Repeal:

Filed 04/21/2010

Effective

05/21/2010

Agency Contact: Patti Kaida

(916)227-4847

File# 2010-0310-01

Department of Alcohol and Drug Programs

Licensure and Certification Fees

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Office of Administrative Law**Changes Filed with Secretary of State**

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This rulemaking makes permanent emergency regulations implementing Senate Bill 84 (Chapter 177 of 2007), which requires the Department of Alcohol and Drug Programs to charge licensing and certification fees, for residential and outpatient drug and alcohol treatment programs, regardless of the form of ownership or organization of the program. The rulemaking also makes permanent the various fees which apply to the licensing or certification of out-patient or residential drug and alcohol treatment programs.

Title 9

California Code of Regulations

Adopt: 10700, 10701
Amend: 10518, 10529
Repeal: 10532, 10533

Filed 04/20/2010

Effective

04/20/2010

Agency Contact: Nanette Rufo

(916)323-1802

File# 2010-0412-01

Department of Food and Agriculture

European Grapevine Moth Interior Quarantine

The Department of Food and Agriculture proposed this emergency regulatory action to amend title 3, California Code of Regulations, section 3437, to expand the quarantine areas for the European Grapevine Moth (EGVM), *Lobesia botrana*, in Napa, Solano, and Sonoma counties, adopted by emergency action in OAL File No. 2010-0225-01E. The proposed action will add approximately 57 square miles in Napa County and will expand the existing quarantine areas to a total of approximately 219 square miles.

Title 3

California Code of Regulations

Adopt:
Amend: 3437(b)
Repeal:

Filed 04/20/2010

Effective

04/20/2010

Agency Contact: Stephen S. Brown

(916)654-1017

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Office of Administrative Law

Changes Filed with Secretary of State

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File# 2010-0303-02
Department of Food and Agriculture
Light Brown Apple Moth Interior Quarantine

This regulatory action is a certification of compliance for the re-adoption (2009-1223-02 EE) of two previous emergency actions (2009-0617-04 E and 2009-0624-02 E). These actions made changes to the interior quarantine areas for the light brown apple moth. The certification of compliance was timely filed.

Title 3
California Code of Regulations

Adopt:
Amend: 3434(b)
Repeal:

Filed	04/15/2010	Effective	04/15/2010
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Agency Contact:	Stephen S. Brown	(916)654-1017
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File# 2010-0406-09
Education Audit Appeals Panel
Audits of K-12 LEAs - FY 2010-11

This emergency rulemaking constitutes the annual proposal, as submitted to the Education Audit Appeals Panel by the State Controller after consultation with the Department of Finance, for the auditing guide to be used in the Fiscal Year 2010-2011 financial and compliance audits of school districts, county offices of education, and other local education agencies serving kindergarten through 12th grade students.

Title 5
California Code of Regulations

Adopt:
Amend: 19816, 19816.1
Repeal:

Filed	04/15/2010	Effective	04/15/2010
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Agency Contact:	Carolyn Pirillo	(916)445-7745
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Office of Administrative Law**Changes Filed with Secretary of State**

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File# 2010-0413-01
Managed Risk Medical Insurance Board
AIM Enrollment Limitations

This emergency action conforms the procedure for making a determination of whether AIM program funding is sufficient to cover the cost of new enrollments with the current practice of the Board, specifying the decisions that are the responsibility of the Board, and those that shall be made by the Executive Director.

Title 10
California Code of Regulations

Adopt:
Amend: 2699.202
Repeal:

Filed 04/21/2010 Effective 04/21/2010

Agency Contact: Dianne Knox (916)234-0592

File# 2010-0309-01
State Allocation Board
Leroy F. Greene School Facilities Act of 1998; Fiscal Crisis Regulations

This certificate of compliance makes permanent the prior emergency regulatory amendments (OAL file no. 2009-1216-10E) that extended until January 1, 2011, the State Allocation Board's (SAB) authority to find school bond apportionments and preliminary apportionments "inactive" to help prevent the apportionments from expiring during California's current fiscal crisis. This action responds to the Pooled Money Investment Board's temporary halt of disbursements for capital projects, including the construction of public schools, on December 17, 2008. The amendments continue the SAB's authority for an additional year to help protect school facility projects from expiring under three programs: (1) New Construction/Modernization Program, (2) Critically Overcrowded School Facilities Program (COS Program), and (3) Charter School Facilities Program (CSFP).

Title 2
California Code of Regulations

Adopt:
Amend: 1859.96, 1859.148.2, 1859.166.2
Repeal:

Filed 04/21/2010 Effective 04/21/2010

Agency Contact: Robert Young (916)375-5939

Office of Administrative Law

Changes Filed with Secretary of State

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Office of Administrative Law**Cumulative Changes**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 5

Adopt:
Amend: 19816, 19816.1
Repeal:

04/15/2010

Title 2

Adopt:
Amend: 1859.96, 1859.148.2, 1859.166.2
Repeal:

04/21/2010

Title 3

Adopt:
Amend: 3434(b)
Repeal:

04/15/2010

Adopt:
Amend: 3437(b)
Repeal:

04/20/2010

Title 9

Adopt: 10700, 10701
Amend: 10518, 10529
Repeal: 10532, 10533

04/20/2010

Title 10

Adopt:
Amend: 2699.202

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Office of Administrative Law

Cumulative Changes

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Repeal:

04/21/2010

Title 11

Adopt:
Amend: 1084
Repeal:

04/21/2010

Title 14

Adopt:
Amend: 895.1, 914.6, 934.6, 954.6, 1024, 1025, 1026, 1030, 1052, 1052.1, 1052.4, 1092, 1092.01, 1092.09, 1092.29
Repeal:

04/20/2010

Title 17

Adopt:
Amend: 95480.1, 95481, 95486
Repeal:

04/15/2010

Title 18

Adopt:
Amend: 192, 193, 371
Repeal:

04/14/2010